

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

Hillsborough Superior Court Northern District
30 Spring St./PO Box 2143
Nashua NH 03061-2143

Telephone: (603) 669-7410
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RECEIPT OF WRIT

Case Name: **Laurie Foistner, et al v James McNulty**
Case Number: **216-2011-CV-00129**

The writ in the above-captioned matter was filed with the Clerk of this Court on: February 24, 2011 at 11:24 AM.

William Aivalikles; Laurie Foistner or his/her attorney is to attach a copy of this Receipt to identical copies of the original writ and deliver them to the Sheriff or other legally authorized entity for service on James McNulty. Sufficient copies shall be provided to allow for a service copy for each named defendant and a copy for each officer completing service to complete the return. The return copies shall be filed with the Court in accordance with Superior Court Rule 3.

BY ORDER OF THE COURT

February 24, 2011

John M. Safford
Clerk of Court

Cc: William Aivalikles, Esq.

(537)

The State of New Hampshire

SUPERIOR COURT

HILLSBOROUGH COUNTY
NORTHERN DISTRICT

() COURT

(x) JURY

WRIT OF SUMMONS

Laurie Foistner
3 Foxberry Drive
New Boston, NH 03070

James McNulty
10714 Sea Cliff Circle
Boca Raton, FL

v.

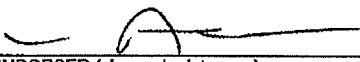
William Aivalikles
12 Nathan Lord Road
Amherst, NH

The Sheriff or Deputy of any County is ordered to summon each defendant to file a written appearance with the Superior Court at the address listed below by the return day of this writ which is the first Tuesday of April, 2011.
YEAR MONTH

The PLAINTIFF(S) state(s):

See attached specification

and the Plaintiff(s) claim(s) damages within the jurisdictional limits of this Court.




INDORSER (sign and print name)

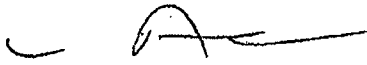
2/23/2011
DATE OF WRIT

NOTICE TO THE DEFENDANT

The Plaintiff listed above has begun legal action against you. You do not have to physically appear in Court on the return day listed above since there will be no hearing on that day. However, if you intend to contest this matter, you or your attorney must file a written appearance form with the Clerk's Office by that date. (Appearance forms may be obtained from the Clerk's Office.) You will then receive notice from the Court of all proceedings concerning this case. If you fail to file an appearance by the return day, judgment will be entered against you for a sum of money which you will then be obligated to pay.

Witness, Robert J. Lynn, Chief Justice, Superior Court.


John M. Safford, Clerk
NH Superior Court Hillsborough County
Northern District
300 Chestnut St.
Manchester NH 03101-2490
(603) 669-7410
213-003-3



SIGNATURE OF PLAINTIFF/ATTORNEY
Attv. William Aivalikles, Esq.
PRINTED/TYPED NAME
60 Main St., Suite 230
ADDRESS
Nashua, NH 03060 / 603-880-0303
PHONE

SPECIFICATION

COUNT I BREACH OF CONTRACT

On or about February 3, 2009, the Plaintiff, Laurie Foistner, retained the services of the Defendant as a liability expert for a claim she had against Citizens Banks. The Defendant agreed to review the facts of her claim and to provide testimony for deposition and trial. The contract was to be performed in whole or in part in New Hampshire since it was contemplated that the Defendant would be testifying in New Hampshire and his report would be disseminated to Citizens Bank's defense counsel. The Defendant was paid a retainer of \$1,500.00 and later billed for additional work. Citizens Bank requested the discovery deposition of the Defendant and he was contacted in September/October 2009 to arrange for a deposition date. The Defendant refused to provide a deposition date until his bill was paid in full. The Defendant was guaranteed payment for his participation in the deposition and any review of the transcript but still refused to participate in a discovery deposition. Due to the Defendant's failure to participate in the discovery deposition the Plaintiff was required to withdraw her claim of liability against Citizens Bank for the negligent banking practices and more specifically outlined in Defendant's report. The damages that the Plaintiff would have pursued against Citizens Bank for this aspect of her claim totaled \$750,000.00. As a result of the Defendant's breach of the agreement in refusing to participate in the discovery deposition the Plaintiff, Laurie Foistner, has been damaged and the Plaintiff, William Aivalikles, was a third party beneficiary of the agreement between Plaintiff and Defendant because of his contingency contract. That the Plaintiff seeks damages as a result of the breach of contract in the amount of \$750,000.00 plus costs, interest and attorney's fees.

**COUNT II VIOLATION OF NEW HAMPSHIRE CONSUMER PROTECTION
STATUTE RSA 358:A ET SEQ**

The Plaintiff incorporates by reference the allegations in Count I not inconsistent herein, and alleges that the Defendant did engage in unfair and deceptive practices as set forth herein. The transaction between the parties was not an exempt transaction pursuant to RSA 358-A:3. The Plaintiffs have sustained damages in the amount of \$750,000.00 and request triple damages pursuant to RSA 358-A:10 (1) plus costs and attorneys fees.